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February 6, 2012

VIA ELECTRONIC TRANSMISSION
www.regulations.gov

The Honorable Ben S. Bernanke, Chairman
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

The Honorable John G. Walsh, Acting Comptroller of the Currency
Department of the Treasury
250 E St, SW
Mail Stop 2-3
Washington, DC 20219

The Honorable Martin J. Gruenberg, Acting Chairman
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

The Honorable Mary L. Schapiro, Chairman
Securities & Exchange Commission
100 F St., NE
Washington, DC 20549-1090

**Re: Notice of Proposed Rulemaking on Prohibitions and Restrictions on
Proprietary Trading and Certain Interests in, and Relationships with, Hedge
Funds and Private Equity Funds (FRS Docket No. R-1432 and RIN 7100 AD 83;
OCC Docket ID OCC-2011-14; FDIC RIN 3064-AD 85; SEC File Number S7-41-
11)**

Ladies and Gentlemen:

On behalf of Mutual of Omaha, I appreciate the opportunity to provide comment in response to the Joint Agencies Proposed Rulemaking on Prohibitions and Restrictions on Proprietary Trading and Certain Interests in Hedge Funds and Private Equity Funds, which implements Section 619 of the Dodd-Frank Act, as referenced above. (Hereinafter, the "Volcker Rule").

As a mutual insurance company that is also a savings and loan holding company, we have numerous concerns about the manner in which the Agencies may exercise regulatory authority over our organization. With this letter, I would like to focus on our particular concerns about the potential adverse consequences that the broad reach of the Volcker Rule, as proposed, will have on our insurance company. We offer commentary for your consideration specific to the particular activities of insurance

companies and the congressional requirement that the agencies appropriately accommodate the business of insurance in their implementation of the Volcker Rule.

Mutual of Omaha is a member of the Financial Services Roundtable (FSR) and the American Council of Life Insurers (ACLI), and we fully support the comments recently submitted by both of these associations. We are intensely focused on the impact of the Volcker Rule on insurers affiliated with insured depository institutions and assert:

- Any general or separate accounts established by an insurance company in compliance with applicable insurance law must be recognized as a “permitted activity” in the proposed regulations;
- The Agencies must clarify that the general and separate account exemption applies equally to investments by insurance companies in “covered funds” under the proposed rules;
- Establishing an investment-making subsidiary under applicable insurance law should be recognized as a “permitted activity” in the proposed regulations; and
- Reporting and recordkeeping requirements and compliance monitoring included in Subpart D should not apply to insurance company investment activities that are permitted activities under BHC Act Section 13 and the Proposed Regulations.

I call your attention to the background provided in the ACLI and FSR commentary in regard to the special characteristics of insurance companies and offer the following additional comments for your consideration.

Background:

The Volcker Rule prohibits banks and their affiliates from engaging in proprietary trading and taking ownership interests in hedge funds and private equity funds. The purpose of the rule is to “reduce potential taxpayer losses at *institutions protected by the federal safety net* and reduce threats to financial stability, by lowering their exposure to risk.” (emphasis added) (See Senate Banking Committee Report to accompany S. 3217, the Restoring American Financial Stability Act, Report No. 111-176, April 30, 2010, p.8.) Paul Volcker has explained this purpose in Senate Banking Committee testimony, noting it is meant to “appropriately define the business of *commercial banks*.” (emphasis added) (See testimony of the Honorable Paul Volcker, Chairman, President’s Economic Recovery Advisory Board, 111th Cong. 5 (2010)). The statutory intent of the BHC Act Section 13 is to have the Volcker Rule “appropriately accommodate the business of insurance” by allowing insurance companies to continue to engage in general and separate account investing subject to regulation in accordance with relevant insurance company investment laws.

We support the Agencies’ efforts to interpret and implement the provisions of the Dodd-Frank Act to distinguish between impermissible trading activities and permissible market making and risk mitigation. In its proposed form, however, the Volcker Rule goes well beyond congressional intent, applying not only to commercial banks covered by the FDIC, but also to *any* company affiliated with a bank.

We strongly oppose the overly complex approach of the rule in its current form and believe it will impose significant and costly compliance burdens and unintended

consequences for legitimate lending operations, their affiliates and the communities they serve. Specifically, we believe the Volcker rule provisions were not intended to impair or impede insurance company operations. Insurance companies are subject to effective and long-standing state investment laws that are specifically designed to promote the safety and soundness of regulated insurance companies through particular measures like investment limits and diversification requirements. The insurance company model, as has been demonstrated repeatedly during implementation of the Dodd-Frank Act, is different from other financial institution models in, among other ways, its focus on supporting long-term liabilities with long-term assets and investments. To appropriately accommodate the business of insurance, recognition of some of its fundamental characteristics must be taken into account within the drafting of the Volcker Rule.

Discussion:

- **The Agencies should clarify the general and separate account exemptions equally apply to investments by insurance companies in “covered funds” under the proposed rules.**

The language of the BHC Act Section 13 exempts insurance company general and separate account investments from the restriction on investing in private equity or hedge funds. By definition, we believe all insurance company investment activity should qualify for the general account exemption, the separate account exemption or some combination thereof. While the proposed regulations identify investment activity backed by general and separate accounts in connection with proprietary trading as a permitted activity, the proposed regulations fail to fully clarify the exemptions provided for via the congressional intent of the Dodd-Frank Act and explicitly in the BHC Act in relation to covered funds. Subpart C of the Volcker Rule should be amended accordingly.

Imposing the covered fund prohibition on insurance company investment activity would also conflict with the specific provisions of state insurance investment laws that are designed to promote both appropriate diversification of investments and the appropriate use of long-term assets to fund the long-term liabilities of insurance companies. Moreover, it would run counter to the proposed regulation's underlying purpose of promoting safety and soundness by denying insurance companies the benefit of state investment laws specifically designed to conform to the insurance business model. If insurance companies affiliated with banking entities were denied investment opportunities available to competitor insurance companies that are not subject to the Volcker Rule, the safety and soundness of insurance companies like Mutual of Omaha (and consequently our affiliated insured depository institutions) will be negatively impacted.

- **Establishing an investment-making subsidiary under applicable insurance law should be recognized as a “permitted activity” in the proposed regulations.**

Section 619(d)(1)(F) of the Volcker Rule permits affiliates of regulated insurance companies to purchase, sell, acquire or dispose of assets so long as such activities are solely for the general account of the regulated insurance company. However, this provision would be nullified if the affiliate (i.e. a subsidiary of the insurance company)

were itself considered to be a covered fund sponsored by the insurance company, making the sponsorship prohibited under the proposed rules.

The proposed rules should be revised to allow an insurance company to organize or invest in a subsidiary for the purpose of making investments, as permitted under applicable state insurance law, without that subsidiary being deemed a covered fund for purposes of the Volcker Rule. We concur with the Financial Services Roundtable that, in recognition of the fact that there is concern if the interests in the investment subsidiary are owned by entities unaffiliated with the insurance company, the permitted activity apply to subsidiaries that are wholly owned by the insurance company or entities that are affiliates of the insurance company. One way to accomplish this is to provide exclusion from the definition of covered fund for insurance company subsidiaries permissibly established under state insurance law.

- **The reporting and recordkeeping requirements and compliance monitoring included in Subpart D should not apply to insurance company investment activities that are permitted activities under BHC Act Section 13 and the Proposed Regulations.**

We concur with the ACLI that the reporting and recordkeeping requirements and compliance monitoring included in Subpart D of the proposed regulations should not apply to insurance company investment activities that are permitted activities under the BHC Act Section 13 and the Volcker Rule. Insurance companies already have comprehensive, well-established and effective oversight of their permitted investment activities under applicable insurance law. The preamble to the Volcker Rule is replete with the Agencies' intentions to appropriately accommodate the business of insurance and rely on relevant insurance company investment laws; however, this is another example of how the language in the current proposal creates ambiguity and conflict.

The proposed regulations introduce reporting and recordkeeping requirements for both trading activities and covered fund activities and investments together with a compliance-monitoring requirement for both activities. These requirements may be relevant to activities and investments of banking entities other than insurance companies where it may be the only substantive rule applicable to these activities. However, as noted, insurance companies already have substantive and comprehensive reporting and recordkeeping rules and laws applicable to these activities, and the proposed rules should create an appropriate exemption.

CONCLUSION

Proper accommodation of the business of insurance requires that insurance companies affiliated with banking entities be able to continue their general and separate account investment activities within the Volcker Rule's framework. It also requires recognition of the validity of the existing state insurance regulatory regime. I again reiterate our support of the comments submitted by the ACLI and Financial Services Roundtable and refer to the Congressional Letter regarding implementation of the Volcker Rule, submitted to your Agencies on January 27, 2012, noting their hope that "the final regulations do not result in any disruption for insurers."

Given the complexity of the issue and the inconsistency in the comment periods (the multi-agency comment period ends February 13, while the CFTC comment period ends March 11), we also respectfully request that the Agencies defer the rulemaking process until the CFTC comment period has concluded in order to help ensure all comments are considered.

We appreciate the opportunity to comment on this very important issue and are available for further discussion at your convenience. Thank you for your consideration.

Respectfully submitted,



David A. Diamond
EVP, CFO & Treasurer
Mutual of Omaha